

Defending Equal Pay Claims

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Defending Equal Pay Claims

- What is “discrimination in compensation?”
 - Not just based on sex
 - A compensation practice that treats individuals or groups differently because of race, color, religion, sex, national origin, age, or disability.
 - Includes all forms of compensation: salary, benefits, etc.

Defending Equal Pay Claims

- When must a claim be brought?
 - Equal Pay
 - 2 or 3 year statute of limitations
 - No administrative exhaustion
 - Title VII
 - Within 180/300 days of the alleged discriminatory practice
 - A new discriminatory pay practice occurs each time the pay-setting decision affects the employee
 - State Law:
 - “[D]iscriminatory Pay is a continuing violation under the THRA.” *Booker v. Boeing Co.* (2006)

Defending Equal Pay Claims

- Plaintiff's Burden
 - “Substantially equal work”
 - Intentional sex discrimination under Title VII
- Affirmative Defenses
 - Seniority system
 - Merit System
 - Quantity- or quality-based pay system
 - Factors “other than sex”

Defending Equal Pay Claims

- What are the available remedies?
 - Back Pay
 - 2/3 years
 - THRA: “for the duration of the practice, until it ‘ceases.’”
 - Front Pay/Reinstatement
 - Emotional Damages
 - Punitive Damages
 - Attorney’s Fees

Setting Compensation

- Establish guidelines utilizing objective criteria (education, geography, experience, etc.)
- Establish grade ranges/tiers for each job ... and stick to them
- Make sure comparable jobs are comparably classified for compensation purposes
- Where exceptions are warranted, document the non-discriminatory reason justifying an exception
- Periodically review and update

Beware “Discretionary” Compensation Decisions

- Regional Manager
 - Salary exception on case-by-case basis
- Managing Partner
 - HR, Compensation can make additional salary adjustments based on experience
- Other
 - Demotions
 - Special Payments

Hiring/Initial Pay Decisions

- See above re Setting Comp. guidelines
- Consider the future consequences of exceptions made at time of hire
- Resist the urge to pay more due solely to immediate need to hire
- Resist the urge to pay less just because they' ll take it
- Document reasons for exceptions and/or pay at upper/lower end of tiers

Performance Evaluations

- Do them -- consistently and for everyone
- Make as Objective as possible; weight accordingly
- Limit Subjectivity
- “vocabulary of facts”¹
- Develop guidelines/instructions for use
- Train managers/reviewers
- Periodically audit

Recordkeeping concerns: What do you keep and for how long?

- You may be defending compensation decisions made years ago by decision-makers who are no longer around
- Documents that explain compensation plan and guidelines
- Documents that explain changes in compensation plan and guidelines
- Performance guidelines and the evaluations
- Promotional decision documents
- Complaints & inquiries about pay; responses

Questions?

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